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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL LEE MCDIARMID,

Defendant and Appellant.

E048587

(Super.Ct.No. SWF021730)

OPINION

APPEAL from the Superior Court of Riverside County. Judith C. Clark, Judge.

Affirmed.

Marta I. Stanton, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

**INTRODUCTION**

Defendant and appellant Michael McDiarmid was charged with one count of failing to register as a sex offender at all residences at which he regularly resided (Pen.

Code,<sup>1</sup> former § 290, subd. (a)(1)(B),<sup>2</sup> count 1)) and one count of failing to register as a sex offender, having been previously convicted of failing to register (former § 290, subd. (g)(2), count 2).<sup>3</sup> It was also alleged that defendant had served two prior prison terms (§ 667.5, subdivision (b)), and that he had suffered one prior strike conviction for rape (§§ 667, subds. (c) & (e)(1), 1170.12, subd. (c)(1).) Defendant pled guilty to counts 1 and 2 and admitted the two prior prison enhancement allegations and the prior strike. He also pled guilty in two other misdemeanor cases. The court sentenced defendant pursuant to a plea agreement to two years in state prison on count 1, doubled for the strike conviction, plus two years for the prior prison enhancements. The court sentenced defendant to four years on count 2, to run concurrently with the sentence on count 1, and 180 days in custody as to the two misdemeanor cases, also to run concurrently with count 1.

Defendant filed a notice of appeal indicating that he was challenging the validity of the plea and requesting a certificate of probable cause. The court granted his request for a certificate of probable cause. We affirm.

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<sup>1</sup> All further statutory references will be to the Penal Code unless otherwise indicated.

<sup>2</sup> Former section 290 was repealed and reenacted effective October 13, 2007. Subdivision (a)(1)(B) of former section 290 was relocated to a new section, section 290.010.) (Stats. 2007, ch. 579, § 7.)

<sup>3</sup> Former section 290, subdivision (g)(2) was renumbered as section 290.018, subdivision (b). (Stats. 2007, ch. 579, § 7.)

## FACTUAL AND PROCEDURAL BACKGROUND

The following facts are taken from the police report dated June 13, 2007:

Defendant was in violation of his annual registration update requirement pursuant to section 290. He failed to update his registration with the Lake Elsinore Police Department within five working days of his birthday (April 18). On May 16, 2007, the Sexual Assault Felony Enforcement (SAFE) Task Force located defendant at his residence address in Perris (the Perris residence) and arrested him. He was released on bail the next day.

Defendant registered with the Los Angeles Police Department on May 31, 2007, listing his home address as being at an address in Woodland Hills (the Woodland Hills residence). On June 6, 2007, defendant called the Lake Elsinore police and scheduled an appointment to update his sex offender registration. However, he called back later that day and said he was not coming because he did not have to register since his primary address was now in Woodland Hills. He said he did not live at the Perris residence “full time.” Defendant was told he was required to register all residence addresses under section 290. Defendant did not register the Perris residence address.

On June 13, 2007, Officer Remmers,<sup>4</sup> who was assigned to the SAFE Task Force, went to the Perris residence and found defendant there. Officer Remmers asked defendant why he had not updated his Perris residence address with the Lake Elsinore police, and defendant said his primary residence was the Woodland Hills residence.

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<sup>4</sup> The record does not appear to contain Officer Remmers’s first name.

Defendant said he was making improvements on the Perris residence, which belonged to his deceased father. He said he only stayed at the Perris residence “less than three days.” Officer Remmers explained to defendant that he was required to register that address with the police, regardless of the number of days or nights he stayed there, because it was considered a concurrent or secondary address. Officer Remmers reviewed defendant’s file and saw that defendant had initialed and signed sex registration forms acknowledging his duties and responsibilities to register numerous times since 2002. Defendant was arrested.

That same day, Officer Remmers called defendant’s home telephone number and spoke with defendant’s roommate at the Woodland Hills residence. His roommate said defendant’s father died in 2002 and that defendant had been making improvements on the Perris residence since then. The roommate said defendant stayed overnight there one or two nights per week.

Prior to the preliminary hearing, the court gave an indicated sentence of six years, and defendant pled to the sheet. Thus, defendant pled guilty to counts 1 and 2 and admitted the two prior prison enhancement allegations and the prior strike.

### ANALYSIS

Defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436, and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and one potential arguable issue, whether the trial court abused its discretion in failing to strike defendant’s strike conviction. Counsel has also requested this court to

undertake a review of the entire record. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, which he has done. He submitted a 53-page handwritten brief, which lists a myriad of issues. Defendant initially asserts that his imprisonment is “illegal and in contravention of the rights guaranteed by the 4th, 5th, 6th and 14th Amendments” He claims that his guilty pleas were not free and voluntary, but coerced. However, the court thoroughly questioned defendant before taking his pleas and found that he understood the charges against him and the consequences of the pleas. The court explicitly asked defendant if anyone had threatened him to get him to plead guilty, and he said “no.” The court found that the pleas were free and voluntary, and that defendant knowingly and intelligently waived his rights. Defendant has given us no reason to believe otherwise.

Defendant further claims the charge in count 1 was “false on its face,” since he registered on May 31, 2007, with his Woodland Hills residence address, which was allegedly his sole residence. He then asserts that he called to register within five days of his birthday, but then called the Van Nuys Police Department and was permitted to extend his registration time to May 31, 2007. {ab 3} Defendant has submitted no evidence to support this claim.

Defendant also argues that Riverside County lacks “territorial jurisdiction” to prosecute him. Assuming he is making this contention based on his claim that the Woodland Hills residence was his sole residence, the record shows otherwise. The police report showed that defendant regularly spent one to two nights per week at the Perris

residence. Thus, for purposes of defendant's sex registration responsibilities under section 290, the Perris residence was considered one of his residences, and he was required to register in Riverside County. Defendant failed to do so.

Defendant next makes the incomprehensible claim that count 2 was ambiguous because the word "transient" . . . relates to a transient, in the ex post facto law and is not a felony." Defendant pled guilty in count 2 to a violation of former section 290, subdivision (g)(2), which provided, as relevant here, that any person who was required to register based on a felony conviction, who had a prior conviction for the offense of failing to register under this section and who subsequently and willfully violated any requirement of section 290, was guilty of a felony and was required to be punished by imprisonment in the state prison for 16 months, or two or three years. The word "transient" did not appear in former section 290, subdivision (g)(2). Moreover, defendant is simply wrong in claiming that count 2 was not a felony. Defendant further alleges that he did not willfully fail to register in count 2, since he had an appointment to "de-register" on June 13, 2007, but was prevented from keeping such appointment by an unwarranted arrest on that day. This claim is unintelligible.

Defendant additionally claims that the records were manipulated for the purpose of misleading the court, and he points out specific items in the record. However, defendant fails to provide any actual evidence of manipulation of the record.

Defendant further contends that his counsel failed to investigate or listen to his claims that he was falsely charged, and that his counsel used "fear tactics" to get him to sign the plea agreement. Defendant makes various claims against two other attorneys

who apparently represented him in this case at different points. His claims range from one attorney failing to review discovery with him to another attorney who did not answer his telephone and stole \$2000 from him. To the extent that defendant is claiming ineffective assistance of counsel (IAC), his claims fail. A defendant who claims IAC must establish that his counsel's performance was deficient under an objective standard of professional competency and that there is a reasonable probability that, but for counsel's errors, a more favorable determination would have resulted. (*People v. Holt* (1997) 15 Cal.4th 619, 703.) If the defendant makes an insufficient showing on either one of these components, the claim fails. (*Ibid.*) Here, defendant has failed to support his claims or establish how his counsels' allegedly deficient performance resulted in prejudice. Thus, his claims of IAC fail.

Defendant further avers that the court "knew and understood that the prosecutor's malicious intention was excessive against [him]." Defendant supports this claim with miscellaneous allegations regarding false information in the amended complaint, the prosecutor's malicious motive and defamation of defendant, and a conspiracy with the police, the court, and others. These claims are nonsensical and unsubstantiated.

Defendant makes a variety of additional claims and allegations, too numerous to list completely. In short, they concern a "wrongful attachment regarding a land dispute and a reprisal," a conspiracy of the Lake Elsinore deputy district attorney and others to deprive defendant's father's trust of the Perris residence, issues regarding his father's properties, the Los Angeles parole department's wrongful actions toward him in 2003, disputes concerning his past charges and convictions, and requests for discovery and

investigations into certain matters. These claims are largely unintelligible, and, in any event, are irrelevant to the instant case.

We have now concluded our independent review of the record and found no arguable issues.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST

Acting P. J.

We concur:

MCKINSTER

J.

MILLER

J.